EXHIBIT A

Charles E. Wheeler
CSB No. 82915
Amanda Lorenz
CSB No. 264336
COZEN O'CONNOR
501 West Broadway, Suite 1610
San Diego, CA 92101
Telephone: 619.234.1700
Toll Free Phone: 1.800.782.3366
Facsimile: 619.234.7831

Attorneys for Defendants TIG INSURANCE COMPANY, THE NORTH RIVER INSURANCE COMPANY, U.S. FIRE INSURANCE COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

NATIONAL FOOTBALL LEAGUE and NFL PROPERTIES, LLC, Plaintiffs, vs. FIREMAN'S FUND INSURANCE COMPANY, TIG INSURANCE COMPANY, et al., Defendants.	Case No.: BC490342 **NOTICE OF MOTION/MOTION TO DISMISS, OR STAY BASED ON *FORUM NON CONVENIENS* [C.C.P. § 418.10(A)(2)]; MEMORANDUM OF POINTS AND AUTHORITIES; SUPPORTING DECLARATION OF JOHN K. HATCH AND REQUEST FOR JUDICIAL NOTICE FILED SEPARATELY** Date: October 11, 2012 Time: 8:30 a.m. Dept.: 46 Judge: Hon. Frederick C. Shaller

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

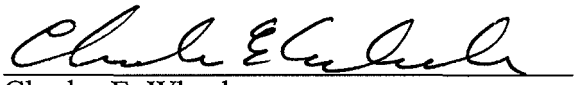
NOTICE IS HEREBY GIVEN that, on October 11, 2012, at 8:30 a.m. or as soon thereafter as counsel may be heard, in Department 46 of the above-entitled Court, located at 111 North Hill Street, Los Angeles, California 90012, Defendants TIG Insurance Company ("TIG"), The North River Insurance Company ("NR"), and United States Fire Insurance Company ("USF") (collectively referred to as "TIG/NR/USF") will move that this Court dismiss or stay proceedings in this action pursuant to C.C.P. § 418.10(a)(2).

This motion is made on the grounds that there are pending actions between the same parties concerning the same issues in the State of New York, that New York is a suitable forum for trial of this action, that the private interests of the litigants, as well as the interest of the State of New York concerning insurance policies issued in New York to New York residents, make New York the appropriate forum for determination of this action, and therefore this Court should dismiss or stay this action in favor of the pending New York actions.

This motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, and the Declaration of John Hatch and Request for Judicial Notice submitted in support of this motion, the Complaint in this action, and such other and further evidence and argument, oral and written, as is submitted at the hearing of this motion.

Dated: September 13, 2012

COZEN O'CONNOR

By: 

Charles E. Wheeler
Amanda Lorenz
Attorneys for TIG INSURANCE COMPANY, THE NORTH RIVER INSURANCE COMPANY, U.S. FIRE INSURANCE COMPANY

MEMORANDUM OF POINTS AND AUTHORITIES

Defendants TIG Insurance Company ("TIG"), The North River Insurance Company ("NR"), and United States Fire Insurance Company ("USF") (collectively referred to as "TIG/NR/USF") submit the following Memorandum of Points and Authorities in support of their Motion to Dismiss or Stay based on *Forum Non Conveniens*.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court should dismiss or stay this matter pursuant to C.C.P. § 418.10(a)(2) and the doctrine of *forum non conveniens*. As set forth more fully below, the decision by the National Football League (the "NFL") and NFL Properties, LLC ("NFL Properties") to file this action in California, after a suit seeking the same relief was filed against both the NFL and NFL Properties in their home state of New York and their home town of New York City, runs directly contrary to both the private and public interests in the efficient resolution of this matter. In accordance with the requirements set forth by California courts applying the doctrine of *forum non conveniens*, New York is a suitable (and more appropriate) forum for this action and the parties' private interests as well as the interests of the State of New York in insurance policies issued to New York residents weigh heavily in favor of this matter being resolved in New York. Both the NFL and NFL Properties are principally located in New York, and the majority of the defendants are located in or around New York. All of the policies issued by TIG/NR/USF, and most of the policies issued by the other insurer defendants, were issued to the NFL at its New York headquarters by way of a New York broker. A large portion of the relevant documents, witnesses and potential discovery sources also are located in or near the State of New York.

In addition, there is currently pending a first-filed New York action involving the very same coverage issues as those presented in this action (*Alterra America Insurance Co. v. National Football League et al.*, Supreme Court of New York, New York County, Index No. 652813/2012). There is also a second coverage action involving all of the parties in this action pending in New York, which likely will be consolidated into the earlier filed action (*Discover Property & Casualty Company et al. v. National Football League et al.*, Supreme Court of New York, New York County, Index No. 652933/2012). The defendants have been served in these matters and many have filed

responsive pleadings. These actions are already proceeding in the New York Court system. A motion to consolidate has also been filed, discovery has commenced and a Preliminary Conference has been set in the *Alterra* action for September 19, 2012.

New York has a substantial public interest in maintaining jurisdiction over this coverage dispute, while California does not. The overwhelming majority of all of the insurance policies included in this action, including all of the TIG/NR/USF policies, were negotiated and issued in New York and, of the thirty-four parties involved in this lawsuit, only ***one*** is physically located in California. By contrast, five of the parties, including the plaintiffs are present in New York, and seventeen of the defendants are headquartered in New Jersey, Pennsylvania or Connecticut. As a result, New York's interest in presiding over this matter, which will require a determination of the rights and obligations of two prominent New York entities, far outweighs any limited interest that California may have.

In sum, the factors summarized above and set forth in detail below plainly illustrate that this action should be resolved in New York as opposed to California, which has virtually no connection to the facts and legal issues to be resolved in this dispute. Therefore, TIG/NR/USF respectfully request that this Court enter an order dismissing or staying the current action in favor of the pending New York litigation.

ARGUMENT

A. Standard of Review

Courts may invoke the doctrine of *forum non conveniens* to decline jurisdiction over a cause of action when they believe that the cause of action "may be more appropriately and justly tried elsewhere." *Stangvik v. Shiley Incorporated* (1991) 54 Cal.3d 744, 751; *see also* C.C.P. § 410.30 ("When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just.") Before doing so, however, California courts addressing a motion based on the *forum non conveniens* doctrine must apply a two-part analysis. *Id.* First, the court must determine whether the alternative forum is a "suitable" place for trial. *Id.* If the forum is suitable, the next step "is to consider the private interests of the litigants and

the interests of the public in retaining the action for trial in California." *Id.*; *see also Century Indemnity Co. v. Bank of America* (1997) 58 Cal.App.4th 408.

B. New York Is A Suitable Place For Trial

In order to be considered suitable, the alternative forum must have jurisdiction over the parties and there must be no statute of limitations bar to the action. *Stangvik , supra,* 54 Cal. 3d at 752 ; *see also, Morris v. AGFA Corp.* (2006) 144 Cal.App.4th 1452 and *Delfosse v. C.A.C.I. Inc.*(1990) 218 Cal.App.3d 683 (requiring that defendants waive their statute of limitations defense in Virginia prior to granting motion to dismiss based on *forum non conveniens*). The court in *Boaz v. Boyle & Co.*(1995) 40 Cal.App.4th 700 directly addressed the question as to whether New York could be considered a suitable alternative forum for the plaintiff's action despite the fact that New York courts had already rejected the plaintiff's theory of the case. The court held that,

> if the defendant is amenable to process there, there is no procedural bar to the ability of courts of the foreign jurisdiction to reach the issues raised on their merits (or, if there is, the advantage of the bar – typically, the statute of limitations – is waived by defendants), and adjudication in the alternative forum is by an independent judiciary applying what American courts regard, generally, as due process of law.

Id. at 711.

In the present case, New York is a proper and superior forum for this action. First, there is no question as to whether New York has jurisdiction over the parties in this action, as illustrated by the fact that all of the parties in this matter are named as parties and have been served in the first-filed New York action commenced by Alterra America Insurance Company and the subsequent lawsuit commenced by Discover Property & Casualty Company and related companies. Furthermore, there are no statute of limitations issues in New York in connection with the claims asserted by the NFL and NFL Properties in this action, and there is no bar to the claims asserted by the NFL and NFL Properties that would deny them a possible remedy. Thus, New York plainly meets the requirements set forth by California courts for a suitable alternative forum.

C. The Private Interests of the Litigants Weigh Heavily In Favor of New York As the Appropriate Forum For This Action

Upon determining that New York serves as a suitable alternative forum, the court must then weigh the private interests of the litigants in order to establish the most convenient forum for the action. *Stangvik, supra*, 54 Cal.3d at 751. The private interest factors to be considered "are those that make trial and the enforceability of the ensuing judgment expeditious and relatively inexpensive, such as the ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses." *Id.*; *see also Rinauro v. Honda Motor Co.* (1995) 31 Cal.App.4th 506 (finding that proper forum was Nevada as opposed to California in action regarding motor vehicle accident because plaintiffs and witnesses resided in Nevada, the accident occurred in Nevada, California subsidiaries did not manufacture or design the vehicle and the lawsuit would be a burden on California courts). An extensive evidentiary showing is not necessary to show that an alternative forum is appropriate, but rather, the examination of private interests should involve more "general considerations." *Campbell v. Parker-Hannifin Corp.* (1999) 69 Cal.App.4th 1534, 1542 (upholding lower court's decision to stay case in favor of Australia as alternative forum based upon the parties' residence and the site of the incident giving rise to the litigation). Undue emphasis should not, however, be placed on any single factor in order to ensure a balanced analysis. *Stangvik, supra*, 54 Cal.3d at 753.

A non-resident plaintiff's choice of forum is entitled to less weight in connection with a *forum non conveniens* motion. *Id.*, 54 Cal.3d at 753 (finding that, because plaintiff resided in a foreign country, its choice of forum was less reasonable and not entitled to the same deference as a resident of state where the action is filed); *see also Century Indem. Co., supra,* (holding that Pennsylvania resident's choice of forum in California should not be afforded substantial weight in determining proper forum) *and Hansen v. Owens-Corning Fiberglas Corp.* (1996) 51 Cal.App.4th 753 (holding that balance of factors overcame plaintiffs' choice of California as the forum for asbestos litigation where plaintiffs were residents of Montana, asbestos exposure occurred in Montana and witnesses were located in Montana). In performing this balancing test, courts will give only "scant consideration" to the fact that certain parties do business in California because such information speaks only to whether California is a proper venue as opposed to the most convenient

forum. *Appalachian Insurance Company v. Superior Court* (1984) 162 Cal.App.3d 427, 435 (quoting *Great Northern Ry. Co. v. Superior Court* (1970) 12 Cal.App.3d 105, 112).

Here, the private interests of the parties weigh overwhelmingly in favor of New York as the proper forum for this action. Despite the plaintiffs' strained attempts to establish contacts with the State of California, there can be no doubt that the NFL and NFL Properties[1] are firmly rooted in the State of New York. Both entities have their principal place of business and headquarters in New York, New York. Of the current thirty-two member football clubs in the NFL, three are affiliated with the State of New York – the Buffalo Bills, the New York Giants and the New York Jets. The NFL also has a rich history in the State of New York, with six additional former member clubs based out of the state, including the Rochester Jeffersons (1920-1925), the Brooklyn Lions (1926), the New York Yankees (1927-1928), the Staten Island Stapletons/Stapes (1929-1932), the New York Bulldogs/Yanks (1949-1951) and the Brooklyn Dodgers/Tigers (1930-1944). Furthermore, every year for the past forty-seven years, the NFL has hosted the NFL Draft in New York City. The NFL Constitution and Bylaws contain no less than thirty provisions expressly stating that all specific temporal deadlines therein are subject to "New York time."

The Complaint ("Complaint") in this action shows that, of the thirty-two defendants named, only one has its principal place of business located in California. While TIG is incorporated in California, its principal place of business is located in New Hampshire. Complaint, ¶ 4. The majority of the remaining defendants are principally located in New York, New Jersey, Pennsylvania and Connecticut. Complaint, ¶¶5-34 Thus, based on the foregoing, the locations of the parties'

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[1]NFL Properties LLC is *not* currently authorized to do business in California, and therefore cannot maintain this action against its insurers pursuant to Corporations Code section 17456(a). This action should therefore be abated as to NFL Properties LLC until it has complied with the registration requirements of Corporations Code section 17451 applicable to foreign limited liability companies, including payment of applicable fees, taxes and penalties. Although NFL Properties LLC alleges in paragraph 2 of the Complaint that it is both qualified to conduct business and conducting business in California, according to the records of the California Secretary of State, NFL Properties LLC is *not* qualified to do business in California as a foreign LLC. *See* the current status of NFL Properties LLC on the on-line website of the California Secretary of State attached to the supporting Request for Judicial Notice, which shows that NFL Properties LLC's registration status as "canceled", For a foreign LLC, "canceled" means that the LLC has "filed a Certificate of Cancellation and the foreign entity is no longer authorized to transact intrastate business in California." *See* the Status Definitions from the Secretary of State's website attached to the Request for Judicial Notice. NFL Properties LLC's current lack of authorization to do business in California emphasizes its lack of contacts with California, and the listing of the LLC's address when it was authorized to do business in California as 280 Park Avenue, New York, New York 10017 shows its strong contacts with New York.

principal places of business weigh overwhelmingly in favor of New York as an appropriate forum, as opposed to California, which is located on the opposite side of the country.

The additional considerations related to the relative ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of witnesses also weigh in favor of New York. Since the NFL and NFL Properties are headquartered in New York, it is clear that a substantial portion of relevant documents (corporate, historical, insurance-related, etc.) as well as the relevant corporate representatives will be located in or near New York.

Each of the policies issued by TIG/NR/USF from 1978 through 2002 was issued to the NFL in New York and listed the NFL's New York address on the declarations page. *See* Declaration of John K. Hatch ("Hatch Decl.") in support of this Motion, ¶¶ 3-39. In short, all of the TIG/NR/USF policies were issued in New York to a New York insured. Additionally, many of the policies reflect on the declarations page or in the underwriting file that they were issued through the NFL's brokers, Corroon & Black, Willis Corroon, or Marsh USA, all located in New York. Hatch Decl., ¶¶ 4, 6-14, 16-17, 20, 23, 26, 33, 36 and 38. As a result, both current and former employees of the New York brokers would be subject to process in New York, but not California. Additional third parties, including numerous New York-based media outlets, also may be relevant sources of discoverable information in this dispute and would be subject to the New York court's subpoena power, but not California's.

D. The Public Interest Factors Also Favor New York Because California Has No Interest In This Litigation

With respect to the public interest in retaining the action, California courts consider factors including "avoidance of the overburdening local courts with congested calendars, protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has little concern, and weighing the competing interests of California and the alternate jurisdiction in litigation." *Stangvik, supra*, 54 Cal.3d at 751. Courts in California have found the fact that there are cases pending in another jurisdiction regarding related issues and parties weighs in favor of the alternative forum. *See Celotex Corp. v. American Ins. Co.* (1987) 199 Cal.App.3d 678

(finding that pending actions in Ohio involving similar issues was appropriate factor to consider in decision to stay California action). Additionally, with respect to actions regarding the interpretation of insurance policies, courts have found that the public policy interest of a state in interpreting insurance coverage for policies issued to that state's residents is an important factor to consider in determining a motion based upon the *forum non conveniens* doctrine. *See Century Indem. Co.*, *supra*, 58 Cal.App.4th at 413 (holding that Hawaii's strong public policy interest in interpreting insurance policies weighed in favor of Hawaii as appropriate forum).

In *Chong v. Superior Court* (1997) 58 Cal.App.4th 1032, the court was asked to determine the proper forum for an action filed by a Hong Kong corporation against Hong Kong citizens arising from a line of credit for the shipment of goods to California. Despite the fact that the plaintiff filed the action in California, the court found that the public interest factors weighed heavily in favor of Hong Kong as the proper forum. *Id.* at 1039. The court based this determination on the following factors:

> Plaintiff is a Hong Kong corporation. Defendants are Hong Kong citizens, though at least one resides in California. The letters of guarantee were negotiated and signed in Hong Kong. The case will be decided under Hong Kong law. Indeed, California's only interest in the litigation is that goods were shipped to California. However the goods were shipped to a business, Artone USA, which is not a party to the lawsuit. Jurors should not be required to decide a case based on Hong Kong law with which they have little or no concern, and the California courts should not be burdened with litigation that may have been previously adjudicated in Hong Kong. Finally, Hong Kong's interest in applying its law and ensuring that its financial institutions are compensated for breach of contract claims far outweighs California's interest in providing a forum for companies that finance a shipment of goods into this state.

Id.

As a result, the court ultimately found that these factors, coupled with the private interests of the parties in favor of Hong Kong, merited the imposition of a stay in the California proceedings. *Id.*

Similar to those presented in *Chong*, the public interest factors at issue in this litigation weigh strongly in favor of New York as the appropriate forum for this action. As set forth above, each of the policies issued by TIG/NR/USF were issued in New York to NFL headquarters. Even further, both plaintiffs are principally located in New York and the majority of the thirty-two defendants are

located in or around New York. As a result, New York's interest in the interpretation of insurance policies issued in New York to policyholders located in New York far outweighs California's interests in retaining this action.

In addition, there are two lawsuits currently pending in New York that deal directly with the insurance claims asserted by the plaintiffs in this matter, one of which was filed *before* this action. All parties have been served in both New York actions, certain parties (including TIG/NR/USF) already have filed responsive pleadings [and a motion to consolidate] in New York, discovery has commenced, and Requests for Judicial Intervention/Preliminary Conference have been made. Thus, the New York actions are more comprehensive and procedurally advanced than the California action. The New York court is fully equipped to determine the rights and obligations of a New York insured under policies governed by New York substantive law—a task that it carries out on a daily basis.

Given the substantial connections with the State of New York, this action can be distinguished from the court's determination in *Ford Motor Co. v. Ins. Co. of North America* (1995) 35 Cal.App.4th 604. *Ford Motor Company* specifically concerned insurance coverage for clean-up of environmental contamination at three sites located in California. *Id.*, at 607. Other actions in other jurisdictions addressed insurance coverage for contamination in other states. The Court found that California "has a fundamental interest in the preservation of the quality of its natural environment and the remediation of toxic contamination within its borders." *Id.* at 614. The Court also noted that a court in Michigan hearing a more comprehensive related action would exercise jurisdiction over sites outside of Michigan *only* if the courts in those states relinquished jurisdiction. *Id.* at 616. The Court of Appeal found that California had an interest in the case because it concerned payment for environmental remediation of sites in California. Moreover, the court found that California's interest in regulating the underlying conduct weighed heavily in favor of maintaining the action in California. *Id.* at 613.

Unlike the scenario presented in *Ford Motor Co.*, California has no unique interest in this insurance coverage action concerning policies issued in New York to New York entities e.g. no natural resources of the state are at issue. In this regard, while the underlying concussion litigation

includes certain claimants that reside in California, they are among more than five thousand claimants located across the country whose interests are not unique to California. The underlying lawsuits largely have been consolidated and transferred to multi-district litigation in the United States District Court for the Eastern District of Pennsylvania. Based on the foregoing, the overwhelming weight of the private interests in this matter indicates that New York is the proper forum for this action.

The plaintiffs have attempted to manufacture a California interest by alleging that there is another action in California, in which Riddell, Inc. ("Riddell") is seeking insurance coverage from its own insurers for suits filed by retired NFL players in which the NFL is also a party. The plaintiffs do not allege that they are parties to the Riddell action against its insurers, or even that they have made a claim against those insurers. Instead, the plaintiffs simply allege that they "have or may have interests as insureds or additional insureds" under policies issued to Riddell.

The insurers anticipate that the NFL will argue that, because Riddell, a California corporation, has filed suit against its insurers in California, this suit also belongs there. The fact that Riddell has filed an action seeking coverage from its own insurers in relation to alleged injuries suffered by former NFL players, however, does not create a California interest in the present action any more than the fact that certain insurers have sued the NFL (a New York entity), in New York means that New York somehow now has an interest in the Riddell suit. Riddell is suing its own insurers over policies issued to it, presumably in California, for its own liability to the former players. Although the NFL alleges that it may be an additional insured under the policies, it does not allege that it has even made such a claim. Nonetheless, if the NFL believes that it has a right to coverage under those policies, it can intervene in that action. The interpretation of Riddell's insurance policies, however, simply has no connection to the interpretation of policies issued to NFL and NFL Properties, New York entities, and it should not have any bearing on the determination of the proper forum for this action.

As set forth above, California has no specific interest in the resolution of this insurance coverage action, as it involves coverage issues arising from policies negotiated and delivered in New York. Although some of the underlying claimants may reside in California, their interests are not

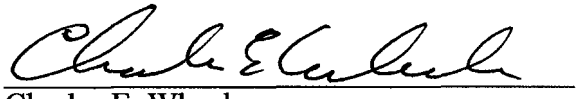
uniquely addressed in this action, and the underlying lawsuits, while filed in numerous jurisdictions, have now been consolidated in the Eastern District of Pennsylvania in Philadelphia. Based upon these factors, California courts and jurors should not be burdened with deciding an action for which they have little or no concern, and New York's public interest in this matter far outweighs any limited interest that California may have.

CONCLUSION

Based on the foregoing, Defendants TIG Insurance Company, The North River Insurance Company, and United States Fire Insurance Company respectfully request that this Court grant their Motion to Dismiss or Stay proceedings in this action pursuant to C.C.P. § 418.10(a)(2)

Dated: September 13, 2012

COZEN O'CONNOR

By: 

Charles E. Wheeler
Amanda Lorenz
Attorneys for TIG INSURANCE COMPANY, NORTH RIVER INSURANCE COMPANY, U.S. FIRE INSURANCE COMPANY

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